



Sen. Kwame Raoul

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LRB095 19342 RLC 53683 a

1 AMENDMENT TO HOUSE BILL 5032

2 AMENDMENT NO. _____. Amend House Bill 5032 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Illinois Torture Inquiry and Relief Commission Act.

6 Section 5. Definitions. As used in this Act:

7 (1) "Claim of torture" means a claim on behalf of a living
8 person convicted of a felony in Illinois asserting that he was
9 tortured into confessing to the crime for which the person was
10 convicted and the tortured confession was used to obtain the
11 conviction and for which there is some credible evidence
12 related to allegations of torture committed by Commander Jon
13 Burge or any officer under the supervision of Jon Burge.

14 (2) "Commission" means the Illinois Torture Inquiry and
15 Relief Commission established by this Act.

16 (3) "Convicted person" means the person making a claim of

1 torture under this Act.

2 (4) "Director" means the Director of the Illinois Torture
3 Inquiry and Relief Commission.

4 (5) "Victim" means the victim of the crime, or if the
5 victim of the crime is deceased, the next of kin of the victim,
6 which shall be the parent, spouse, child, or sibling of the
7 deceased victim.

8 Section 10. Purpose of Act. This Act establishes an
9 extraordinary procedure to investigate and determine factual
10 claims of torture related to allegations of torture that shall
11 require an individual to voluntarily waive rights and
12 privileges as described in this Act.

13 Section 15. Commission established.

14 (a) There is established the Illinois Torture Inquiry and
15 Relief Commission. The Illinois Torture Inquiry and Relief
16 Commission shall be an independent commission under the
17 Illinois Human Rights Commission for administrative purposes.

18 (b) The Illinois Human Rights Commission shall provide
19 administrative support to the Commission as needed. The
20 Executive Director of the Illinois Human Rights Commission
21 shall not reduce or modify the budget of the Commission or use
22 funds appropriated to the Commission without the approval of
23 the Commission.

1 Section 20. Membership; chair; meetings; quorum.

2 (a) The Commission shall consist of 8 voting members as
3 follows:

4 (1) One shall be a retired Circuit Court Judge.

5 (2) One shall be a former prosecuting attorney.

6 (3) One shall be a law school professor.

7 (4) One shall be engaged in the practice of criminal
8 defense law.

9 (5) Three shall be members of the public who are not
10 attorneys and who are not officers or employees of the
11 Judicial branch.

12 (6) One shall be a former public defender. The
13 Commission shall be appointed as follows:

14 2 members appointed by the Governor;

15 2 members appointed by the President of the Senate;

16 One member appointed by the Minority Leader of the
17 Senate;

18 2 members appointed by the Speaker of the House of
19 Representatives; and

20 One member appointed by the Minority Leader of the
21 House of Representatives.

22 After an appointee has served his or her first 3-year term,
23 the subsequent appointment or reappointment may be by the
24 initial appointing authority.

25 (a-1) The appointing authority shall also appoint
26 alternate Commission members for the Commission members he

1 or she has appointed to serve in the event of scheduling
2 conflicts, conflicts of interest, disability, or other
3 disqualification arising in a particular case. Where an
4 alternate member is called upon to serve in a particular
5 place, the alternate member shall vote in the place of, and
6 otherwise exercise the same powers as, the member which he
7 or she is replacing. The alternate member shall have the
8 same qualifications for appointment as the original
9 member. In making the appointments, the appointing
10 authority shall make a good faith effort to appoint members
11 with different perspectives of the justice system. The
12 appointing authority shall also consider geographical
13 location, gender, and racial diversity in making the
14 appointments.

15 (b) The retired judge who is appointed as a member
16 under subsection (a) shall serve as Chair of the
17 Commission. The Commission shall have its initial meeting
18 no later than one month after the appointment of a quorum
19 of members of the Commission, at the call of the Chair. The
20 Commission shall meet a minimum of once every 6 months and
21 may also meet more often at the call of the Chair. The
22 Commission shall meet at such time and place as designated
23 by the Chair. Notice of the meetings shall be given at such
24 time and manner as provided by the rules of the Commission.
25 A majority of the voting members shall constitute a quorum.
26 All Commission votes shall be by majority vote of the

1 voting members appointed.

2 Section 25. Terms of members; compensation; expenses.

3 (a) Of the initial members, the appointments under clauses
4 (a)(3) and (6) of Section 20 shall be for one-year terms, the
5 appointments under clauses (a)(1), (2), and (4) of Section 20
6 shall be for 2-year terms, and the appointments under clause
7 (a)(5) of Section 20 shall be for 3-year terms. Thereafter, all
8 terms shall be for 3 years. Members of the Commission shall
9 serve no more than 2 consecutive 3-year terms plus any initial
10 term of less than 3 years. Unless provided otherwise by this
11 Act, all terms of members shall begin on January 1 and end on
12 December 31.

13 Members serving by virtue of elective or appointive office,
14 may serve only so long as the office holders hold those
15 respective offices. The Chief Judge of the Cook County Circuit
16 Court may remove members for good cause shown. Vacancies
17 occurring before the expiration of a term shall be filled in
18 the manner provided for the members first appointed.

19 (b) The Commission members shall receive no salary for
20 serving, but may be reimbursed for reasonable expenses incurred
21 as a result of their duties as members of the Commission from
22 funds appropriated by the General Assembly for that purpose, or
23 from funds obtained from sources other than the General
24 Assembly.

1 Section 30. Director and other staff. The Commission shall
2 employ a Director. The Director shall be an attorney licensed
3 to practice in Illinois at the time of appointment and at all
4 times during service as Director. The Director shall assist the
5 Commission in developing rules and standards for cases accepted
6 for review, coordinate investigation of cases accepted for
7 review, maintain records for all case investigations, prepare
8 reports outlining Commission investigations and
9 recommendations to the trial court, and apply for and accept on
10 behalf of the Commission any funds that may become available
11 from government grants, private gifts, donations, or bequests
12 from any source.

13 Subject to the approval of the Chair, the Director shall
14 employ such other staff and shall contract for services as is
15 necessary to assist the Commission in the performance of its
16 duties, and as funds permit.

17 The Commission may meet in an area provided by the Illinois
18 Human Rights Commission, or any other State agency. The
19 Illinois Human Rights Commission shall provide, directly or
20 through any other State agency, office space for the Commission
21 and the Commission staff.

22 Section 35. Duties. The Commission shall have the
23 following duties and powers:

24 (1) To establish the criteria and screening process to be
25 used to determine which cases shall be accepted for review.

1 (2) To conduct inquiries into claims of torture with
2 priority to be given to those cases in which the convicted
3 person is currently incarcerated solely for the crime to which
4 he or she claims torture by Jon Burge or officers Under his
5 command, or both.

6 (3) To coordinate the investigation of cases accepted for
7 review.

8 (4) To maintain records for all case investigations.

9 (5) To prepare written reports outlining Commission
10 investigations and recommendations to the trial court at the
11 completion of each inquiry.

12 (6) To apply for and accept any funds that may become
13 available for the Commission's work from government grants,
14 private gifts, donations, or bequests from any source.

15 Section 40. Claims of torture; waiver of convicted person's
16 procedural safeguards and privileges; formal inquiry;
17 notification of the crime victim.

18 (a) A claim of torture may be referred to the Commission by
19 any court, person, or agency. The Commission shall not consider
20 a claim of torture if the convicted person is deceased. The
21 determination of whether to grant a formal inquiry regarding
22 any other claim of torture is in the discretion of the
23 Commission. The Commission may informally screen and dismiss a
24 case summarily at its discretion.

25 (b) No formal inquiry into a claim of torture shall be made

1 by the Commission unless the Director or the Director's
2 designee first obtains a signed agreement from the convicted
3 person in which the convicted person waives his or her
4 procedural safeguards and privileges including but not limited
5 to the right against self-incrimination under the United States
6 Constitution and the Constitution of the State of Illinois,
7 agrees to cooperate with the Commission, and agrees to provide
8 full disclosure regarding Inquiry requirements of the
9 Commission. The waiver under this subsection does not apply to
10 matters unrelated to a convicted person's claim of torture. The
11 convicted person shall have the right to advice of counsel
12 prior to the execution of the agreement and, if a formal
13 inquiry is granted, throughout the formal inquiry. If counsel
14 represents the convicted person, then the convicted person's
15 counsel must be present at the signing of the agreement. If
16 counsel does not represent the convicted person, the Commission
17 Chair shall determine the convicted person's indigency status
18 and, if appropriate, enter an order for the appointment of
19 counsel for the purpose of advising on the agreement.

20 (c) If a formal inquiry regarding a claim of torture is
21 granted, the Director shall use all due diligence to notify the
22 victim in the case and explain the inquiry process. The
23 Commission shall give the victim notice that the victim has the
24 right to present his or her views and concerns throughout the
25 Commission's investigation.

26 (d) The Commission may use any measure provided in the Code

1 of Civil Procedure and the Code of Criminal Procedure of 1963
2 to obtain information necessary to its inquiry. The Commission
3 may also do any of the following: issue subpoenas or other
4 process to compel the attendance of witnesses and the
5 production of evidence, administer oaths, petition the Circuit
6 Court of Cook County or of the original jurisdiction for
7 enforcement of process or for other relief, and prescribe its
8 own rules of procedure. All challenges with regard to the
9 Commission's authority or the Commission's access to evidence
10 shall be heard by the Circuit Court of Cook County, including
11 any in camera review.

12 (e) While performing duties for the Commission, the
13 Director or the Director's designee may serve subpoenas or
14 other process issued by the Commission throughout the State in
15 the same manner and with the same effect as an officer
16 authorized to serve process under the laws of this State.

17 (f) All State discovery and disclosure statutes in effect
18 at the time of formal inquiry shall be enforceable as if the
19 convicted person were currently being tried for the charge for
20 which the convicted person is claiming torture.

21 (g) If, at any point during an inquiry, the convicted
22 person refuses to comply with requests of the Commission or is
23 otherwise deemed to be uncooperative by the Commission, the
24 Commission shall discontinue the inquiry.

25 Section 45. Commission proceedings.

1 (a) At the completion of a formal inquiry, all relevant
2 evidence shall be presented to the full Commission. As part of
3 its proceedings, the Commission may conduct hearings. The
4 determination as to whether to conduct hearings is solely in
5 the discretion of the Commission. Any hearing held in
6 accordance with this Section shall be a public hearing and
7 shall be held subject to the Commission's rules of operation.

8 (b) The Director shall use all due diligence to notify the
9 victim at least 30 days prior to any proceedings of the full
10 Commission held in regard to the victim's case. The Commission
11 shall notify the victim that the victim is permitted to attend
12 proceedings otherwise closed to the public, subject to any
13 limitations imposed by this Act. If the victim plans to attend
14 proceedings otherwise closed to the public, the victim shall
15 notify the Commission at least 10 days in advance of the
16 proceedings of his or her intent to attend. The Commission may
17 close any portion of the proceedings to the victim, if the
18 victim is to testify and the Commission determines that the
19 victim's testimony would be materially affected if the victim
20 hears other testimony at the proceeding.

21 (c) After hearing the evidence, the full Commission shall
22 vote to establish further case disposition as provided by this
23 subsection. All 8 voting members of the Commission shall
24 participate in that vote.

25 If 5 or more of the 8 voting members of the Commission
26 conclude by a preponderance of the evidence that there is

1 sufficient evidence of torture to merit judicial review, the
2 case shall be referred to the Chief Judge of the Circuit Court
3 of Cook County by filing with the clerk of court the opinion of
4 the Commission with supporting findings of fact, as well as the
5 record in support of such opinion, with service on the State's
6 Attorney in non-capital cases and service on both the State's
7 Attorney and Attorney General in capital cases.

8 If less than 5 of the 8 voting members of the Commission
9 conclude by a preponderance of the evidence that there is
10 sufficient evidence of torture to merit judicial review, the
11 Commission shall conclude there is insufficient evidence of
12 torture to merit judicial review. The Commission shall document
13 that opinion, along with supporting findings of fact, and file
14 those documents and supporting materials with the court clerk
15 in the circuit of original jurisdiction, with a copy to the
16 State's Attorney and the chief judge.

17 The Director of the Commission shall use all due diligence
18 to notify immediately the victim of the Commission's conclusion
19 in a case.

20 (d) Evidence of criminal acts, professional misconduct, or
21 other wrongdoing disclosed through formal inquiry or
22 Commission proceedings shall be referred to the appropriate
23 authority. Evidence favorable to the convicted person
24 disclosed through formal inquiry or Commission proceedings
25 shall be disclosed to the convicted person and the convicted
26 person's counsel, if the convicted person has counsel. The

1 Commission shall have the discretion to refer its findings
2 together with the supporting record and evidence, to such other
3 parties or entities as the Commission in its discretion shall
4 deem appropriate.

5 (e) All proceedings of the Commission shall be recorded and
6 transcribed as part of the record. All Commission member votes
7 shall be recorded in the record. All records and proceedings of
8 the Commission shall be confidential until the proceedings
9 before the Commission are concluded and a final decision has
10 been made by the Commission.

11 Section 50. Post-commission judicial review.

12 (a) If the Commission concludes there is sufficient
13 evidence of torture to merit judicial review, the Chair of the
14 Commission shall request the Chief Judge of the Circuit Court
15 of Cook County for assignment to a trial judge for
16 consideration. The court may receive proof by affidavits,
17 depositions, oral testimony, or other evidence. In its
18 discretion the court may order the petitioner brought before
19 the court for the hearing. Notwithstanding the status of any
20 other postconviction proceedings relating to the petitioner,
21 if the court finds in favor of the petitioner, it shall enter
22 an appropriate order with respect to the judgment or sentence
23 in the former proceedings and such supplementary orders as to
24 rearraignment, retrial, custody, bail or discharge, or for such
25 relief as may be granted under a petition for a certificate of

1 innocence, as may be necessary and proper.

2 (b) The State's Attorney, or the State's Attorney's
3 designee, shall represent the State at the hearing before the
4 assigned judge.

5 Section 55. No right to further review of decision by
6 Commission; convicted person retains right to other
7 postconviction relief.

8 (a) Unless otherwise authorized by this Act, the decisions
9 of the Commission are final and are subject to review as final
10 decisions under the provisions of the Administrative Review
11 Law, and shall only be overturned if the court finds that they
12 are against the manifest weight of the evidence.

13 (b) A claim of torture asserted through the Commission
14 shall not adversely affect the convicted person's rights to
15 other postconviction relief.

16 Section 60. Beginning January 1, 2010, and annually
17 thereafter, the Illinois Torture Inquiry and Relief Commission
18 shall report on its activities to the General Assembly and the
19 Governor. The report may contain recommendations of any needed
20 legislative changes related to the activities of the
21 Commission. The report shall recommend the funding needed by
22 the Commission, the State's Attorneys, and the Department of
23 State Police in order to meet their responsibilities under this
24 Act. Recommendations concerning the State's Attorneys or the

1 Department of State Police shall only be made after
2 consultations with the Illinois State's Attorneys Association,
3 the Department of State Police, and the Attorney General.

4 Section 65. The initial members of the Illinois Torture
5 Inquiry and Relief Commission shall be appointed not later than
6 3 months after the effective date of this Act. No claims of
7 torture may be filed with the Commission until a quorum of
8 members have been appointed.

9 Section 70. This Act applies to claims of torture filed
10 not later than 5 years after the effective date of this Act.

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.".